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Rural real estate market and purchase regulations applicable to corporations

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These last years have shown an explosive increase of foreign investors purchasing rural land in Uruguay. The reasons are many: economic stability in Uruguay and the region in comparison with a severe economic crisis in the US and Europe; rise of commodities' prices as a consequence of an increase of the international demand for agricultural products; low interest rates making banking deposits unattractive; highly volatile capital markets, and the list goes on.

The increase of foreign investors buying land in Uruguay and the high demand for such lands has directly derived in a strong rise of land price, in some cases up to 400% in the last 3 years. However, land prices still look attractive if compared with the rest of the countries of the region (Argentina, Brazil, Chile).

In consideration of the existing strong appetite for Uruguayan rural land, it is worth referring to the legal regulations applicable to the purchase (and agricultural exploitation, including, for example, entering into lease agreements) of rural land by corporations.

In this respect, the relevant legal framework to consider is Act No. 18.092 of January 7, 2007, as amended by Act No. 18.172 of August 31, 2007, and Governmental Decrees Nos. 225/07 and 201/08.

The general rule is provided by Act No. 18.092 (as amended by Act No. 18.172) as it declares of general interest that the owners of rural lands and agricultural exploitations shall be physical persons or legal entities whose social capital is represented by nominative quotas or shares owned by physical persons.

In the case of corporations (*sociedades anónimas*) it is expressly stated that they can

own rural land and agricultural exploitations as long as 100% of its share capital is represented by nominative (registered) shares owned by physical persons (with certain exceptions which shall be analysed subsequently).

At this point, it is important to stress the fact that Uruguayan law does not discriminate between Uruguayans and foreigners, so there is no restriction whatsoever for foreigners to own rural land either under their own name or indirectly as shareholder of a corporation with registered shares.

The above mentioned restriction does not apply in the case of rural land dedicated to activities different to agricultural ones (for example, industrial or commercial activities).

The above mentioned restriction imposed over corporations and other legal entities, has certain exceptions expressly regulated by Decrees Nos. 225/07 and 201/08 (the Decrees).

The Decrees provide basically for two kinds of exceptions.

i) Exceptions based on certain special characteristics of the legal entity. In this group we find, *inter alia*, domestic or foreign corporations which shares are traded in well known local or foreign stock exchanges; domestic or foreign pension funds.

ii) Exceptions granted to legal entities (including corporations, branches of foreign companies, trusts, investment funds) with bearer shares or nominative shares not included within the cases described in (i) above, in case the activity they develop constitutes part of a project considered as a priority for the productive development of Uruguay (commonly known as the "productive project exception").

It should be noted that the exception is not automatic; the interested party shall in all cases obtain the authorisation from the Executive Branch prior to executing the purchase agreement or starting the exploitation activities over the rural land.

When analyzing the productive project exception, the Executive Branch shall consider if the project covers the following objectives: creation of new employment opportunities within the rural sector, development of small family enterprises, eradication of poverty in rural sectors, incorporation of technology, promotion of territorial decentralisation, development of new productive circuits.

The exception is in any case granted for the purchase (or exploitation) of those specific lands included within the request submitted before the Executive Branch. Consequently, a new exception has to be applied for in case of additional purchases (or exploitations) of rural land.

However, the Decrees provide for a fast track authorization procedure, applicable to those legal entities which have obtained an exception to own (or exploit) rural land. In this case it is provided that the authorisation to own (or exploit) additional land shall be considered duly granted 30 days after the request is filed, unless observed by the Executive Branch. In this last case, the procedure shall continue in accordance to the standard authorisation procedure.

Lastly, it is relevant to stress that it is not necessary to disclose the name of beneficial owners of legal entities who own real estate. Local regulations provide that it is sufficient to certify in the purchase agreement (title deed) that the purchaser is a corporation with registered shares which are owned by a physical person, but it is not mandatory or necessary to reveal the identity of the shareholder.

Financial and corporate

Recommended firms

Tier 1

Ferrere
Guyer & Regules
Hughes & Hughes

Tier 2

Jiménez de Aréchaga Viana & Brause
Posadas Posadas & Vecino
Sanguinetti Foderé Bragard Abogados

Tier 3

Estudio Bergstein
Olivera & Delpiazzo

Uruguay's football team surprised the world last July when it placed fourth overall in the World Cup, but the country is also turning heads as a reliable and rewarding investment target in the region. The nation's lawyers say Uruguay's two most significant industries - offshore banking and forestry - are feeling pressure from outside sources, and the government is taking measures to protect its thriving economy while appeasing the demands of an increasingly global financial community.

In November 2009 the country chose former leftist rebel leader-cum flower grower José Mujica as president, and the centre-left politician vowed to maintain the investment-friendly policies of predecessor Tabaré Vazquez. But after just a few months in office the new administration introduced laws imposing capital gains taxes on foreign income of Uruguayan citizens and opening financial statements to inquiries of tax evasion from foreign governments.

While moving the nation closer to OECD membership critics denounce the reforms as heavy handed, and some even include Uruguay on a sort of black list of hostile banking environments. But commentators note that new taxes do not apply to offshore institutions, and therefore Uruguay remains a tax-free jurisdiction for foreign banks.

The recovery of the global demand for goods brought renewed activity to Uruguay's industrial sector and Free Trade Zones last year, but the most significant news came with the breakthrough over a lone paper mill on the Uruguay River. The Fray Bentos eucalyptus pulp plant has met stiff opposition from Argentines living on the opposite banks since its very proposal in 2006. For three years activists blockaded an important bridge between the two countries, and the Argentine government has taken Uruguay to the international court to stop the operation.

But in April of last year ICJ justices ruled Uruguay had not violated environmental

agreements with its neighbour across the river but said Argentina should have been consulted properly over the project. Two months later a group of activists lifted its three-year blockade of a crucial bridge over the river, following tireless negotiations with both Argentine and Uruguayan officials. The matter was finally brought to rest in July when the two nations formed a joint commission, called CARU, to monitor pollution on the river.

The prolonged fracas over Fray Bentos proved too much for operator Metsä Botnia, which passed off the plant to rival UPM at the end of 2009 along with a supporting eucalyptus plantation. The \$2.1 billion price tag - a record for Uruguay's M&A market - displays the incredible strength of the sustainable forestry industry in Uruguay and the Fray Bentos plant itself, which is already UPM's most profitable unit.

Ferrere

Ferrere's renowned banking and finance practice is considered number one in the nation by competitors and clients alike. "In banking Ferrere is the first - it is what I think and what I know," says one banking client of the firm, adding, "All my friends at other banks agree."

Uruguay's legal community was shocked and saddened by the death of founder and managing partner Daniel Ferrere in July 2010 in a helicopter crash, and clients note the highly-regarded practitioner's administrative duties have been taken up by partner Andrés Cerisola.

Competitors mention the departure of banking and finance head Alejandro Hernández to Estudio Bergstein last April spells the loss of an important figure, particularly in the specific area of product liability. Partner Diego Rodríguez has stepped into the lead position of the firm's finance team, bringing a reputation among American corporates doing business in Uruguay. "He worked in Washington for a while," says one client, "and it really helps when a lawyer understands US law in the Latin American context."

The firm continues to make headway in neighbouring markets through offices in Bolivia and Paraguay. The micro-regional presence allows Ferrere to take part in some very specific cross-border deals, including Brazilian miner Vale's acquisition of Rio Tinto's Potash and iron ore operations regionally. Partner Martín Cerruti led Vale's counsel for all Uruguay and Paraguayan aspects of the \$1.6 billion deal.

Leading lawyers

Andrés Cerisola
Martín Cerruti
Diego Rodríguez

Guyer & Regules

With 100 years in the market Guyer & Regules stands as one of the oldest firms in Uruguay, and with nearly 100 lawyers in the market, the firm bares the distinction as the largest firm in the transactional market. Memberships to professional networks like Lex Mundi and Munilaw make Gruyer a reference in the market for foreign corporates and multinational banks like HSBC and Citibank.

Clients consider the partners to be "professional and ethical lawyers", with particular regard to partner Álvaro Tarabal as an adept corporate representative. "He knows the ins and outs of the commercial code and can adapt foreign concepts to the model," one client mentions. Managing partner Nicolás Herrera earns regard among competitors for being "committed to higher causes" when it comes to legal opinions.

Tarabal recently provided counsel to Brazil's Eurofarma, which last May took a majority stake in Uruguayan rival laboratory Gautier, as well as a slice of the domestic pharmaceutical manufacturing market. Under the agreement Eurofarma completes the total acquisition after two years.

The firm also advised Rio Tinto on the Uruguayan aspects of its exit from the region, and represented Scandinavian papermaker Stora Enso in its joint venture with forestry company Arauco, which bought several of Ence Group's local holdings in 2009 for \$344 million.

Leading lawyers

Nicolás Herrera
Nicolás Piaggio
Álvaro Tarabal

Hughes & Hughes

Maintaining a small but commanding practice in banking and finance, competitors say Hughes is the firm of choice for large-scale transactions rather than standard corporate matters. In December 2009 managing partner Conrado Hughes Delgado said farewell to the firm, however peers praise partner Marcela Hughes for managing an impressive roster of loyal clients who "tend to be very keen on her". One rival states: "She's a very good lawyer, particularly on corporate side."

Last year Marcela Hughes and partners Haroldo Espalter and Enrique Radmilovich represented BBVA in its successful bid to purchase French bank Credit Agricole's Uruguayan operations for an undisclosed amount. The deal, set to close at the end of 2010, makes BBVA the second largest bank in Uruguay after Santander.

Sustainable forestry and paper mill UPM chose Hughes to counsel its acquisition of rival Metsä-Botnia's Fray Bentos pulp mill and affiliated Forest Oriental eucalyptus plantation. The total value of over \$2.1 billion makes it largest M&A deal in Uruguay history.

Leading lawyers

Haroldo Espalter
Marcela Hughes

Jiménez de Aréchaga Viana & Brause

Descended from three of the top names in Uruguay's legal history, rivals note Jiménez draws from a strong list of traditional corporate leaders, as well as important international banking clients like Uruguay's largest bank Santander. However competitors contend the firm's family structure stifles the growth of new talent that limits the firm's abilities. "It's not a firm I see working on managing their business as an enterprise," says one peer.

While acknowledging partner Fernando Jiménez de Aréchaga's valuable experience as an ICSID conciliator, one competitor mentions the expected return of the next generation to bring an influx of fresh talent to the firm's partnership. "I have worked with them in some projects and think they are very good," says one peer, "but it's a new generation and it will take several years for them to develop."

Leading lawyers

Fernando Jiménez de Aréchaga

Posadas Posadas & Vecino

Having a leading profile in Uruguay's declining offshore financial industry means PPV is looking to other jurisdictions, according to peers. "They see that Uruguay will be more and more not a friendly jurisdiction and now shifting their operations to their Panama offices," says one rival.

Partner Juan Carlos Oreggia is singled out as a talented practitioner in the foreign fund community. "He's very good, very sensible and reasonable," one client remarks, added, "The firm is known for providing quality services."

The firm represented Chilean pulp company Arauco for its part in acquiring most of Ence's local assets, including a large tree farm and a company planning to develop a pulp mill in the Punta Pereira Free Trade Zone. The \$344 million deal, joined by Finnish-Swedish conglomerate Stora Enso, makes the new joint venture Uruguay's largest private landowner.

Leading lawyers

Juan Carlos Oreggia Carrau

Sanguinetti Foderé Bragard Abogados

With little more than five years in Uruguay's legal market, clients say the Sanguinetti firm "is very new and very good." One client particularly attributes the firm's swift ascension among the local ranks to partner Jean Jacques Bragard. "He's very young and became very big in so little time," the client says, adding, "everybody here recognises that effort."

Peers say the Sanguinetti's modern partnership model makes it a firm of choice among the newest crop of foreign investors entering the market, and partner Eduardo Sanguinetti earns credit as the firm's talent in corporate transactions. But competitors note the firm recently suffered the exit of several important clients, including France's Banco Agricol, which sold its local unit to BBVA last year.

In 2009 Sanguinetti advised Spanish forestry group and regular client Ence in selling a large tree plantation and Free Trade Zone pulp mill project to a joint venture between rivals Arauco and Stora Enso. While the \$344 million deal represents the lion's share of Ence's operations in Uruguay, the company retains a swath of forest land, shipping terminal and chipping plant in Montevideo.

Leading lawyers

Jean Jacques Bragard
Eduardo Sanguinetti

Other ranked firms

Competitors say **Estudio Bergstein** is a family firm with a small practice filled with talented lawyers. Last year the firm captured Ferrere's banking and finance head Alejandro Hernández to lead Bergstein's comparable practice group, a move peers say brings a strong background in Uruguay's local banking community.

Recent work saw partner Jonás Bergstein represent Finnish pulp mill operator Metsä Botnia's sale of its large-fibre eucalyptus forest to fellow Finnish forester UPM, a record \$2.1 billion deal for the nation.

Leading lawyers: Jonás Bergstein and Alejandro Hernández